

E & R AMENDMENTS TO LB 385

Introduced by Enrollment and Review Committee: Flood, 19,
Chairperson

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. Section 29-2262, Revised Statutes Cumulative
4 Supplement, 2004, is amended to read:

5 29-2262 (1) When a court sentences an offender to
6 probation, it shall attach such reasonable conditions as it deems
7 necessary or likely to insure that the offender will lead a
8 law-abiding life. No offender shall be sentenced to probation if
9 he or she is deemed to be a habitual criminal pursuant to section
10 29-2221.

11 (2) The court may, as a condition of a sentence of
12 probation, require the offender:

13 (a) To refrain from unlawful conduct;

14 (b) To be confined periodically in the county jail or to
15 return to custody after specified hours but not to exceed (i) for
16 misdemeanors, the lesser of ninety days or the maximum jail term
17 provided by law for the offense and (ii) for felonies, one hundred
18 eighty days;

19 (c) To meet his or her family responsibilities;

20 (d) To devote himself or herself to a specific employment
21 or occupation;

22 (e) To undergo medical or psychiatric treatment and to
23 enter and remain in a specified institution for such purpose;

1 (f) To pursue a prescribed secular course of study or
2 vocational training;

3 (g) To attend or reside in a facility established for the
4 instruction, recreation, or residence of persons on probation;

5 (h) To refrain from frequenting unlawful or disreputable
6 places or consorting with disreputable persons;

7 (i) To possess no firearm or other dangerous weapon if
8 convicted of a felony, or if convicted of any other offense, to
9 possess no firearm or other dangerous weapon unless granted written
10 permission by the court;

11 (j) To remain within the jurisdiction of the court and
12 to notify the court or the probation officer of any change in his
13 or her address or his or her employment and to agree to waive
14 extradition if found in another jurisdiction;

15 (k) To report as directed to the court or a probation
16 officer and to permit the officer to visit his or her home;

17 (l) To pay a fine in one or more payments as ordered;

18 (m) To pay for tests to determine the presence of drugs
19 or alcohol, psychological evaluations, offender assessment screens,
20 and rehabilitative services required in the identification,
21 evaluation, and treatment of offenders if such offender has the
22 financial ability to pay for such services;

23 (n) To perform community service as outlined in sections
24 29-2277 to 29-2279 under the direction of his or her probation
25 officer;

26 (o) To be monitored by an electronic surveillance device
27 or system and to pay the cost of such device or system if the

1 offender has the financial ability;

2 (p) To participate in a community correctional facility
3 or program as provided in the Community Corrections Act;

4 (q) To successfully complete an incarceration work camp
5 program as determined by the Department of Correctional Services;

6 (r) To satisfy any other conditions reasonably related to
7 the rehabilitation of the offender;

8 (s) To make restitution as described in sections 29-2280
9 and 29-2281; or

10 (t) To pay for all costs imposed by the court, including
11 court costs and the fees imposed pursuant to section 29-2262.06.

12 (3) In all cases in which the offender is guilty
13 of violating section 28-416, a condition of probation shall be
14 mandatory treatment and counseling as provided by such section.

15 (4) In all cases in which the offender is guilty of
16 a crime covered by the DNA Identification Information Act, a
17 condition of probation shall be the taking of a DNA sample pursuant
18 to the act prior to release on probation.

19 Sec. 2. Section 29-4101, Revised Statutes Cumulative
20 Supplement, 2004, is amended to read:

21 29-4101 Sections 29-4101 to 29-4115 shall be known and
22 may be cited as the ~~DNA Detection of Sexual and Violent Offenders~~
23 Identification Information Act.

24 Sec. 3. Section 29-4102, Revised Statutes Cumulative
25 Supplement, 2004, is amended to read:

26 29-4102 The Legislature finds that DNA data banks are
27 an important tool in criminal investigations, in the exclusion

1 of individuals who are the subject of criminal investigations or
2 prosecutions, ~~and~~ in deterring and detecting recidivist acts, and
3 in locating and identifying missing persons and human remains.

4 Several states have enacted laws requiring persons convicted
5 of certain crimes, especially sex offenses, to provide genetic
6 samples for DNA typing tests. Moreover, it is the policy of
7 this state to assist federal, state, and local criminal justice
8 and law enforcement agencies in the identification and detection
9 of individuals in criminal investigations and in locating and
10 identifying missing persons and human remains. It is in the best
11 interest of this state to establish a State DNA Data Base for
12 DNA records and a State DNA Sample Bank as a repository for DNA
13 samples from individuals convicted of felony sex offenses and other
14 specified offenses and from individuals for purposes of assisting
15 in locating and identifying missing persons and human remains.

16 Sec. 4. Section 29-4103, Revised Statutes Cumulative
17 Supplement, 2004, is amended to read:

18 29-4103 For purposes of the DNA Detection of Sexual and
19 ~~Violent Offenders~~ Identification Information Act:

20 (1) Combined DNA Index System means the Federal Bureau
21 of Investigation's national DNA identification index system that
22 allows the storage and exchange of DNA records submitted by state
23 and local forensic DNA laboratories;

24 (2) DNA means deoxyribonucleic acid which is located in
25 the cells and provides an individual's personal genetic blueprint.
26 DNA encodes genetic information that is the basis of human heredity
27 and forensic identification;

1 (3) DNA record means the DNA identification information
2 stored in the State DNA Data Base or the Combined DNA Index System
3 which is derived from DNA typing test results;

4 (4) DNA sample means a blood, tissue, or bodily fluid
5 ~~or tissue~~ sample provided by any person with respect to offenses
6 covered by the DNA ~~Detection of Sexual and Violent Offenders~~
7 Identification Information Act for analysis or storage, or both;

8 (5) DNA typing tests means the laboratory procedures
9 which evaluate the characteristics of a DNA sample which are of
10 value in establishing the identity of an individual;

11 (6) Felony sex offense means a felony offense, or an
12 attempt, conspiracy, or solicitation to commit a felony offense,
13 under any of the following:

14 (a) Kidnapping of a minor pursuant to section 28-313,
15 except when the person is the parent of the minor and was not
16 convicted of any other offense in this subdivision;

17 (b) Incest of a minor pursuant to section 28-703;

18 (c) Sexual assault in the first or second degree pursuant
19 to section 28-319 or 28-320;

20 (d) Sexual assault of a child pursuant to section
21 28-320.01;

22 (e) Sexual assault of a vulnerable adult pursuant to
23 subdivision (1)(c) of section 28-386; and

24 (f) False imprisonment of a minor in the first degree
25 pursuant to section 28-314, except when the person is the parent
26 of the minor and was not convicted of any other offense in this
27 subdivision;

1 (7) Law enforcement agency includes a police department,
2 a town marshal, a county sheriff, and the Nebraska State Patrol;

3 (8) Other specified offense means an offense, or an
4 attempt, conspiracy, or solicitation to commit an offense, under
5 any of the following:

6 (a) Murder in the first degree pursuant to section
7 28-303;

8 (b) Murder in the second degree pursuant to section
9 28-304;

10 (c) Manslaughter pursuant to section 28-305; ~~or~~

11 (d) Stalking pursuant to sections 28-311.02 to 28-311.05;
12 and

13 (e) Burglary pursuant to section 28-507; or

14 (f) Robbery pursuant to section 28-324; and

15 (9) Released means any release, parole, furlough, work
16 release, prerelease, or release in any other manner from a prison,
17 a jail, or any other detention facility or institution.

18 Sec. 5. Section 29-4104, Revised Statutes Cumulative
19 Supplement, 2004, is amended to read:

20 29-4104 The State DNA Data Base is established. The
21 Nebraska State Patrol shall administer the State DNA Data Base and
22 shall provide DNA records to the Federal Bureau of Investigation
23 for storage and maintenance in the Combined DNA Index System.
24 The patrol shall provide for liaison with the Federal Bureau of
25 Investigation and other law enforcement agencies in regard to the
26 state's participation in the Combined DNA Index System. The State
27 DNA Data Base shall store and maintain DNA records related to:

1 (1) Forensic casework, including, but not limited to,
2 forensic casework relating to missing persons, relatives of missing
3 persons, and unidentified human remains;

4 (2) Convicted offenders required to provide a DNA
5 sample under the DNA ~~Detection of Sexual and Violent Offenders~~
6 Identification Information Act; and

7 (3) Anonymous DNA records used for research or quality
8 control; and -

9 (4) Missing persons, relatives of missing persons, and
10 unidentified human remains.

11 Sec. 6. Section 29-4105, Revised Statutes Cumulative
12 Supplement, 2004, is amended to read:

13 29-4105 (1) The Nebraska State Patrol shall prescribe
14 procedures to be used in the collection, submission,
15 identification, analysis, storage, and disposition of DNA
16 samples in the State DNA Sample Bank and DNA records ~~under the DNA~~
17 ~~Detection of Sexual and Violent Offenders Act~~ in the State DNA Data
18 Base. These procedures shall include quality assurance guidelines
19 for laboratories which submit DNA records to the State DNA Data
20 Base and shall also require that all laboratories be accredited by
21 the American Society of Crime Laboratory Directors-LAB-Laboratory
22 Accreditation Board or the National Forensic Science Technology
23 Center or by any other national accrediting body or public agency
24 which has requirements that are substantially equivalent to or more
25 comprehensive than those of the society or center. The State DNA
26 Data Base shall be compatible with the procedures specified by the
27 Federal Bureau of Investigation, including the use of comparable

1 test procedures, laboratory equipment, supplies, and computer
2 software. The DNA records shall be securely stored in the State DNA
3 Data Base and retained in a manner consistent with the procedures
4 established by the Federal Bureau of Investigation.

5 (2) The Nebraska State Patrol may contract with the
6 University of Nebraska Medical Center to establish the State DNA
7 Sample Bank at the medical center and for DNA typing tests. The
8 State DNA Sample Bank shall serve as the repository of DNA samples
9 collected under the act. The DNA Identification Information Act and
10 other forensic casework. Any such contract shall require that the
11 University of Nebraska Medical Center in contracting under the act
12 is be subject to the same restrictions and requirements of the act,
13 insofar as applicable, as the Nebraska State Patrol, as well as any
14 additional restrictions imposed by the patrol.

15 (3) The DNA samples and DNA records shall only be
16 used by the Nebraska State Patrol (a) to create a separate
17 population data base comprised of DNA records obtained ~~under~~
18 ~~the act~~ after all personal identification is removed and (b)
19 for quality assurance, training, and research purposes related
20 to human DNA identification. The patrol may share or disseminate
21 the population data base with other law enforcement agencies or
22 forensic DNA laboratories which assist the patrol with statistical
23 data bases. The population data base may be made available to and
24 searched by other agencies participating in the Combined DNA Index
25 System.

26 (4) Except for records and samples expunged under section
27 29-4109, the Nebraska State Patrol shall permanently retain DNA

1 samples and records of an individual obtained under section
2 29-4106. Any other DNA samples and records related to forensic
3 casework, other than those used for research or quality control,
4 shall not be permanently retained but shall be retained only
5 as long as needed for a criminal investigation or criminal
6 prosecution.

7 (5) If the Nebraska State Patrol determines after
8 analysis that a forensic sample has been submitted by an individual
9 who has been eliminated as a suspect in a crime, the patrol
10 or the law enforcement agency which submitted the sample shall
11 destroy the DNA sample and record in the presence of a witness.
12 After destruction, the patrol or law enforcement agency shall
13 make and keep a written record of the destruction, signed by the
14 individual who witnessed the destruction. After the patrol or the
15 law enforcement agency destroys the DNA sample and record, it shall
16 notify the individual if he or she is not a minor or the parent or
17 legal guardian of a minor by certified mail that the sample and
18 record have been destroyed. Destruction of a DNA sample and record
19 under this section shall not be considered the offense of tampering
20 with physical evidence under section 28-922.

21 Sec. 7. Section 29-4106, Revised Statutes Cumulative
22 Supplement, 2004, is amended to read:

23 29-4106 (1) A person who is convicted of a felony sex
24 offense or other specified offense on or after ~~September 13, 1997~~
25 the effective date of this act, who does not have a DNA sample
26 available for use in the State DNA Sample Bank, shall have a DNA
27 sample ~~drawn~~ taken:

1 (a) Upon intake to a prison, jail, or other detention
2 facility or institution to which such person is sentenced. If
3 the person is already confined at the time of sentencing, the
4 person shall have a DNA sample ~~drawn~~ taken immediately after the
5 sentencing. Such DNA samples shall be ~~drawn~~ taken at the place
6 of incarceration or confinement. Such person shall not be released
7 unless and until a DNA sample has been ~~drawn~~ taken; or

8 (b) As a condition for any sentence which will not
9 involve an intake into a prison, jail, or other detention facility
10 or institution. Such DNA samples shall be ~~drawn~~ taken at a
11 detention facility or institution as specified by the court. Such
12 person shall not be released unless and until a DNA sample has been
13 ~~drawn~~ taken.

14 (2) A person who has been convicted of a felony sex
15 offense or other specified offense before September 13, 1997 the
16 effective date of this act, who does not have a DNA sample
17 available for use in the State DNA Sample Bank, and who is still
18 serving a term of confinement for such offense on September 13,
19 1997 the effective date of this act, shall not be released prior to
20 the expiration of his or her maximum term of confinement unless and
21 until a DNA sample has been ~~drawn~~ taken.

22 Sec. 8. Section 29-4107, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 29-4107 (1) Only individuals (a) who are physicians or
25 registered nurses, (b) who are trained to withdraw human blood for
26 scientific or medical purposes and are obtaining blood specimens
27 while working under orders of or protocols and procedures approved

1 by a physician, registered nurse, or other independent health care
2 practitioner licensed to practice by the state if the scope of
3 practice of that practitioner permits the practitioner to obtain
4 blood specimens, or (c) who are both employed by a licensed
5 institution or facility and have been trained to withdraw human
6 blood for scientific or medical purposes shall ~~draw~~ withdraw blood
7 for a DNA sample under the DNA ~~Detection of Sexual and Violent~~
8 ~~Offenders~~ Identification Information Act.

9 (2) In addition to the DNA sample, one thumb print or
10 fingerprint shall be taken from the person from whom the DNA sample
11 is being ~~drawn~~ taken for the exclusive purpose of verifying the
12 identity of such person. The DNA sample and the thumb print or
13 fingerprint shall be delivered to the Nebraska State Patrol within
14 five working days after ~~drawing~~ taking the sample.

15 ~~(2)~~ (3) A person authorized to ~~draw~~ take DNA samples
16 under ~~this section~~ the act is not criminally liable for ~~drawing~~
17 taking a DNA sample and transmitting DNA records pursuant to the
18 act if he or she performs these activities in good faith and is
19 not civilly liable for such activities if he or she performed such
20 activities in a reasonable manner according to generally accepted
21 medical and other professional practices.

22 Sec. 9. Section 29-4108, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 29-4108 (1) All DNA samples and DNA records submitted
25 ~~pursuant to the DNA Detection of Sexual and Violent Offenders~~
26 ~~Act~~ to the State DNA Sample Bank or the State DNA Data Base
27 are confidential except as otherwise provided in the ~~act~~ DNA

1 Identification Information Act. The Nebraska State Patrol shall
2 make DNA records in the State DNA Data Base available:

3 (a) To law enforcement agencies and forensic DNA
4 laboratories which serve such agencies; and

5 (b) Upon written or electronic request and in furtherance
6 of an official investigation of a criminal offense or offender or
7 suspected offender.

8 (2) The Nebraska State Patrol shall adopt and promulgate
9 rules and regulations governing the methods of obtaining
10 information from the State DNA Data Base and the Combined DNA
11 Index System and procedures for verification of the identity and
12 authority of the requester.

13 (3) The Nebraska State Patrol may, for good cause shown,
14 revoke or suspend the right of a forensic DNA laboratory in this
15 state to have access to or submit records to the State DNA Data
16 Base.

17 (4) For purposes of this subsection, person means a
18 law enforcement agency, the Federal Bureau of Investigation, any
19 forensic DNA laboratory, or person. No records or DNA samples
20 shall be provided to any person unless such person enters into
21 a written agreement with the Nebraska State Patrol to comply
22 with the provisions of section 29-4109 relative to expungement,
23 when notified by the Nebraska State Patrol that expungement has
24 been granted. Every person shall comply with the provisions of
25 section 29-4109 within ten calendar days of receipt of such notice
26 and certify in writing to the Nebraska State Patrol that such
27 compliance has been effectuated. The Nebraska State Patrol shall

1 provide notice of such certification to the person who was granted
2 expungement.

3 Sec. 10. Section 29-4109, Revised Statutes Cumulative
4 Supplement, 2004, is amended to read:

5 29-4109 A person whose DNA record has been included
6 in the State DNA Data Base pursuant to the DNA ~~Detection of~~
7 ~~Sexual and Violent Offenders~~ Identification Information Act may
8 request expungement on the grounds that the conviction on which
9 the authority for including such person's DNA record was based has
10 been reversed and the case dismissed. The Nebraska State Patrol
11 shall purge all DNA records and identifiable information in the
12 data base pertaining to the person and destroy all DNA samples
13 from the person upon receipt of a written request for expungement
14 pursuant to this section and a certified copy of the final court
15 order reversing and dismissing the conviction.

16 Within ten calendar days of granting expungement, the
17 Nebraska State Patrol shall provide written notice of such
18 expungement pursuant to subsection (4) of section 29-4108, to any
19 person to whom DNA records and samples have been made available.
20 The Nebraska State Patrol shall establish procedures for providing
21 notice of certification of expungement to the person who was
22 granted expungement.

23 Sec. 11. Section 29-4112, Revised Statutes Cumulative
24 Supplement, 2004, is amended to read:

25 29-4112 The Nebraska State Patrol or any other aggrieved
26 individual or agency may institute an action in a court of
27 proper jurisdiction against any person, including law enforcement

1 agencies, to enjoin such person or agency from violating the
2 ~~DNA Detection of Sexual and Violent Offenders~~ Identification
3 Information Act.

4 Sec. 12. Section 29-4113, Revised Statutes Cumulative
5 Supplement, 2004, is amended to read:

6 29-4113 The Nebraska State Patrol may recommend to
7 the Legislature that the Legislature enact legislation for the
8 inclusion of additional offenses for which DNA samples shall be
9 taken and otherwise subjected to the ~~DNA Detection of Sexual and~~
10 ~~Violent Offenders~~ Identification Information Act. In determining
11 whether to recommend additional offenses, the Nebraska State Patrol
12 shall consider those offenses for which DNA testing will have a
13 substantial impact on the detection and identification of sexual
14 offenders and violent offenders.

15 Sec. 13. Section 29-4114, Revised Statutes Cumulative
16 Supplement, 2004, is amended to read:

17 29-4114 The Nebraska State Patrol shall adopt and
18 promulgate rules and regulations to carry out the ~~DNA Detection of~~
19 ~~Sexual and Violent Offenders~~ Identification Information Act.

20 Sec. 14. Section 29-4115, Revised Statutes Cumulative
21 Supplement, 2004, is amended to read:

22 29-4115 Except as provided in section 29-4105, the
23 ~~DNA Detection of Sexual and Violent Offenders~~ Identification
24 Information Act shall not limit or abrogate any existing authority
25 of peace officers to take, maintain, store, and utilize DNA samples
26 for law enforcement purposes.

27 Sec. 15. Original sections 29-2262, 29-4101, 29-4102,

1 29-4103, 29-4104, 29-4105, 29-4106, 29-4107, 29-4108, 29-4109,
2 29-4112, 29-4113, 29-4114, and 29-4115, Revised Statutes Cumulative
3 Supplement, 2004, are repealed.

4 2. On page 1, strike beginning with the first "to" in
5 line 2 through the semicolon in line 3 and insert ", 29-4102,
6 29-4103, 29-4104, 29-4105, 29-4106, 29-4107, 29-4108, 29-4109,
7 29-4112, 29-4113, 29-4114, and 29-4115, Revised Statutes Cumulative
8 Supplement, 2004; to provide a condition of probation;".